Supreme Court, U.S.
FILED
NOV 19 1992
OFFICE OF THE CLERK

No. 92-34

In The

Supreme Court of the United States

October Term, 1992

MUSICK, PEELER & GARRETT, LEONARD CASTRO, ROBERT SCHUCHARD, J.H. COHN & CO., ED BACANI and ROBERT TORKAR,

Petitioners,

vs.

EMPLOYERS INSURANCE OF WAUSAU and FEDERAL INSURANCE COMPANY,

Respondents.

On Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

JOINT APPENDIX

CHARLES A. BIRD
LUCE, FORWARD, HAMILTON & SCRIPPS
600 West Broadway
San Diego, CA 92101
(619) 699-2406

Counsel of Record for Petitioners

LAWRENCE H. NAGLER
HARRY J. REBHUHN
NACI E. MURDOCK
LAWRENCE H. NAGLER & ASSOCIATES
9100 Wilshire Boulevard
Fifth Floor - West Tower
Beverly Hills, CA 90212
(310) 273-2666

Counsel of Record for Respondents

Petition For A Writ Of Certiorari Filed July 2, 1992
Certiorari Granted October 5, 1992

CRAIT LAW BRIEF PRINTING CO. (800) 225-6964
OR CALL COLLECT (402) 342-2831

TABLE OF CONTENTS

Page

NOTATION REGARDING LOCATION OF ITEMS NOT PART OF APPENDIX ii

TABLE OF SIGNIFICANT DOCKET ENTRIES 1

FIRST AMENDED COMPLAINT FOR DAMAGES: (1) CONTRIBUTION; (2) EQUITABLE INDEMNITY .. 3

NOTATION REGARDING LOCATION OF ITEMS NOT PART OF APPENDIX

The following opinions, decisions, judgments and orders have been omitted in printing this joint appendix because they appear on the following pages in the appendix to the printed Petition for a Writ of Certiorari:

Memorandum Decision and Order of the United States District Court for the Southern District of California, dated April 9, 1990 and filed April 10, 1990 ..... App. 14

Judgment of the United States District Court for the Southern District of California, entered April 12, 1990 ..... App. 31

Opinion of the United States Court of Appeals for the Ninth Circuit filed January 23, 1992 ..... App. 1

Order of the United States Court of Appeals for the Ninth Circuit filed May 28, 1992 ..... App. 32

TABLE OF SIGNIFICANT DOCKET ENTRIES

DATE	COURT	ITEM
May 9, 1989	District	Filed: Complaint for Damages
July 18, 1989	District	Filed: First Amended Complaint for Damages
January 11, 1990	District	Filed: Notice of Motion and Motion to Dismiss First Amended Complaint by Defendant Musick, Peeler & Garrett, Castro and Schuchard
January 22, 1990	District	Filed: Defendants' Notice of Motion and Motion to Dismiss First Amended Complaint
April 2, 1990	District	Heard: Defendants' Motions to Dismiss First Amended Complaint
April 10, 1990	District	Filed: Memorandum Decision and Order
April 12, 1990	District	Entered: Judgment
May 7, 1990	District	Filed: Plaintiffs' Notice of Appeal
June 25, 1990	Appeals	Docketed: Plaintiffs' Appeal
June ~~6~~, 1991	Appeals	Heard: Plaintiffs' Appeal
January 23, 1992	Appeals	Filed: Opinion
February 6, 1992	Appeals	Filed: Petition for Rehearing And Suggestion of Rehearing *en banc*

April 21, 1992	Appeals	Filed: Supplement to Suggestion for Rehearing *en banc*
May 28, 1992	Appeals	Filed: Order (Denying Petition for Rehearing and Rejecting Suggestion for Rehearing *en banc*)
July 2, 1992	Supreme	Filed: Petition for a Writ of Certiorari
October 5, 1992	Supreme	Filed: Order (Granting Petition for Certiorari)

Lawrence Nagler, Esq.
Larry Goldberg, Esq.
NAGLER & SCHNEIDER
9460 Wilshire Boulevard
Ste. 410
Beverly Hills, California 90212
Telephone: (213) 274-8201

Attorneys for Plaintiffs,
EMPLOYERS INSURANCE OF WAUSAU and
FEDERAL INSURANCE COMPANY

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

EMPLOYERS INSURANCE OF WAUSAU and FEDERAL INSURANCE COMPANY,

Plaintiffs,

v.

MUSICK, PEELER & GARRETT, a Partnership; LEONARD CASTRO, an Individual; ROBERT SCHUCHARD, an Individual; K.M.G. MAIN HURDMAN, a partnership; PEAT, MARWICK, MAIN & CO., a Partnership; J.H. COHN & CO., a Partnership; ED BACANI, an Individual; ROBERT TORKAR, an Individual; DOES 1 through 100; and ROES 1 through 300, Inclusive,

Defendants.

) Case No. 890705 JLI(BTM)

FIRST AMENDED COMPLAINT FOR DAMAGES: (1) CONTRIBUTION; (2) EQUITABLE INDEMNITY

DEMAND FOR JURY TRIAL

Plaintiffs, EMPLOYERS INSURANCE OF WAUSAU ("WAUSAU") and FEDERAL INSURANCE COMPANY ("FEDERAL") (WAUSAU and FEDERAL are herein after referred to collectively as "Plaintiffs") complain against Defendants and allege as follows:

INTRODUCTION

1. This is a civil action for recovery of damages caused by the wrongful conduct of certain attorneys and accountants as set forth below. This lawsuit arises from a class action securities litigation in which insureds of WAUSAU and FEDERAL were named as defendants, which was settled for $13,500,000, $13,000,000 of which was paid by WAUSAU and FEDERAL as subrogees of their insureds. By this Complaint Plaintiffs seek damages as contribution and/or equitable indemnity the from attorneys and accountants whose recklessness, gross negligence and negligence contributed to produce the injuries to the plaintiff class in the securities litigation and who are liable to those plaintiffs for the same harm for which the named defendants in that case were liable.

JURISDICTION

2. This Court has jurisdiction over claims for relief alleged herein under 28 U.S.C. § 1331, in that Plaintiffs' right to relief with respect to certain of its claims for contribution based on Defendants' alleged violations of federal securities laws arise under federal law, and because certain of their claims for indemnity based on state law necessarily depend on resolution of substantial questions of federal law under the Securities Exchange of

1934, 15 U.S.C. §§ 78(a) *et seq.* (the "Exchange Act") and the Securities Act of 1933, 15 U.S.C. §§ 77(a) *et seq.* (the "Securities Act"). This Court has pendent jurisdiction over the claims that arise under state law because the state law claims arise from a common nucleus of operative facts, and are so intertwined with the other matters pending before this Court as to make the exercise of jurisdiction appropriate.

VENUE

3. Venue of this action is proper in this judicial district pursuant to 28 U.S.C. § 1391(b) in that the claim arose within this judicial district.

PARTIES AND PARTICIPANTS

(Plaintiffs)

4. Plaintiff WAUSAU is a mutual insurance company duly organized and existing under the laws of the State of Wisconsin, with its principal place of business in Wausau, Wisconsin. WAUSAU is authorized to transact and transacts insurance business in the State of California and transacts business within the venue of this Court. WAUSAU issued and became obligated by the terms of a Securities Act Liability Policy, No. 5736-00-200577 ("WAUSAU Policy"), to, among other matters, hold the insureds thereunder harmless, within the limits therein stated, from and against such loss, liability, cost or expense as the insureds may incur, sustain or discover that they have incurred or sustained by reason of any claim or claims which may be made against the insureds

in respect of any transaction entered into during the period from October 11, 1983, to December 11, 1986, under any provision of the Securities Act, or the Exchange Act, or the common or statutory law of the United States of America or of any state or other jurisdictions with respect to:

(a) the purchase by the underwriters, the public offering or any purchases or any sales made by or to any person of all or any of the securities of COUSINS HOME FURNISHINGS, INC. ("COUSINS"), registered with the United States Securities and Exchange Commission; or

(b) any purchase or sale of securities of COUSINS by the insureds specified in the policy in connection with transactions entered into to facilitate the public offering of COUSINS securities.

The insureds under the WAUSAU policy included COUSINS its directors and officers, COUSINS employees who signed its registration statement in connection with the public offering of securities which became effective December 7, 1983, the co-lead underwriters for the offering (Montgomery Securities and Wheat, First Securities), and others specified in the policy.

5. Plaintiff FEDERAL is a stock insurance company duly organized and existing under the laws of the State of New Jersey, with its principal place of business in the State of New Jersey. FEDERAL is authorized to transact and transacts insurance business in the State of California and transacts business within the venue of this Court. FEDERAL issued and became obligated by the terms of an Executive Liability and Indemnification Policy, No. 80956982, ("FEDERAL Policy"), to, among other matters:

(a) pay on behalf of each of the insured persons (insured persons is defined as any person who was prior to or at the date of the FEDERAL Policy, or became during the policy a duly elected director or a duly elected or appointed officer of COUSINS and its subsidiaries) for a loss which such insured person is not indemnified for by COUSINS and/or its subsidiaries and which such insured person becomes legally obligated to pay on account of any claims made against him, individually or otherwise, during or after the policy period (December 7, 1983, to December 7, 1986) for a wrongful act; and

(b) to pay on behalf of COUSINS and its subsidiaries all loss for which they grant indemnification to each insured person, as permitted or required by law, which such insured person has become legally obligated to pay on account of any claim(s) made against him, individually or otherwise, during or after the policy period, for a wrongful act.

6. Plaintiffs, as subrogees of their insureds, which insureds were defendants in the underlying securities litigation, have standing to bring this Complaint for complete and/or partial contribution and/or equitable indemnity from the Defendants sued herein who are liable for wrongful conduct which caused harm and damage to the plaintiff class in the underlying securities litigation consisting of all persons who purchased COUSINS common stock between December 7, 1983, through July 18, 1984.

(Defendants)

7. Defendant MUSICK, PEELER & GARRETT ("MUSICK") is a partnership organized under the laws of the State of California, with its principal place of business in the City of Los Angeles. At all times material hereto, MUSICK served as principal legal counsel for COUSINS in connection with, among other matters, its December 7, 1983, initial public offering of common stock. At all times relevant hereto, defendant MUSICK committed the wrongful acts and omissions set forth below in the ordinary course of its business, and aided and abetted others in committing wrongful acts and omissions complained of herein, in part to obtain the substantial fees it received from COUSINS.

8. Defendant LEONARD CASTRO ("CASTRO") is an individual and a resident of the State of California who, as an attorney licensed under the laws of the State of California, acted at all times pertinent hereto as the partner in the MUSICK law firm principally responsible for the conduct and handling of COUSINS' legal affairs. He substantially participated in the preparation and filing of the COUSINS' Registration Statement and COUSINS' Prospectus and in various legal matters relating thereto. At all times pertinent hereto, Defendant CASTRO committed the wrongful acts and omissions set forth below in the ordinary course of business of the MUSICK partnership or with the authority of his co-partners.

9. Defendant ROBERT SCHUCHARD ("SCHUCHARD") is an individual and a resident of the State of California who, as an attorney licensed under the laws of the State of California, acted at all times pertinent hereto

as an associate lawyer employed by MUSICK, who participated substantially in the furnishing of services to COUSINS by that firm in connection with activities which are the subject of this Complaint. At all times pertinent hereto, Defendant SCHUCHARD committed the wrongful acts and omissions set forth below in the ordinary course of business of the MUSICK partnership in his capacity as a MUSICK employee acting within the scope of business of the MUSICK partnership.

10. Plaintiffs are informed and believe and thereon allege that at the time of the wrongful acts alleged hereafter, K.M.G. MAIN, HURDMAN ("MAIN"), was a partnership of certified public accountants organized under the laws of the State of California and transacting business within the venue of this Court. At all times material hereto, Defendant MAIN was engaged by COUSINS to provide independent auditing, accounting and advisory services, for which MAIN received substantial fees. In performing these services for COUSINS, MAIN's personnel were frequently present at COUSINS' headquarters and had continual access to and knowledge of COUSINS' private and confidential business and financial information, and thus knew or recklessly disregarded the true facts as hereinafter alleged regarding the time financial condition and business problems of COUSINS which were concealed from the investing public. MAIN audited COUSINS' financial statements for the period ended June 30, 1983, in connection with the December 1983 public offering and reported in an unqualified opinion that the financial statements at and for the period ended June 30, 1983, fairly presented COUSINS' financial position and results of operations in accordance with Generally

Accepted Accounting Principles ("GAAP") and had been examined in accordance with Generally Accepted Accounting Standards ("GAAS"). Plaintiffs are informed and believe and thereon allege that MAIN, assisted by COHN, prepared for inclusion in documents filed by COUSINS in connection with the December 1983 public offering, restated financial information and financial information covering the period July 1, 1983 through September 30, 1983. Furthermore, MAIN reviewed COUSINS' financial matters and other events subsequent to the June 1983 financials as part of its S-1 review. At all times pertinent hereto, Defendant MAIN committed the wrongful acts and omissions set forth below in the ordinary course and conduct of its business and aided and abetted others in committing wrongful acts and omissions complained of herein in part to obtain the substantial fees it received from COUSINS.

11. PEAT, MARWICK, MAIN & CO. ("PEAT, MARWICK") is a partnership of certified public accountants organized under the laws of the State of California, with its principal place of business in San Francisco, California. PEAT, MARWICK transacts business within the venue of this Court. Plaintiffs are informed and believe and thereon allege that PEAT, MARWICK is the successor of MAIN, and on that basis, is responsible for the wrongful acts and omissions by MAIN as set forth below.

12. Defendant J.H. COHN & CO. ("COHN") is a partnership of certified public accountants organized under the laws of the State of California, with its principal place of business in the City of San Diego and transacts business within the venue of this Court. At all times material hereto, Defendant COHN was engaged by

COUSINS predecessor, S.A. Levitz, Inc. ("SAL"), and thereafter by COUSINS, to provide independent auditing, accounting and advisory services, for which COHN received substantial fees. In connection with the services it rendered to SAL and to COUSINS, COHN's personnel was present at SAL' s and COUSINS' corporate headquarters frequently and had continual access to and knowledge of their private and confidential business and financial information, and thus knew or recklessly disregarded the true facts as hereinafter alleged concerning the actual financial condition and business problems of COUSINS which were concealed from the investing public. COHN audited SAL's and COUSINS' financial statements for the periods ended June 30, 1979, 1980, 1981 and 1982, and in connection with COUSINS' December 1983 public offering, reported unqualified opinions that the June 30, 1981 and 1982 financial statements fairly presented COUSINS' financial position and results of operations in accordance GAAP and had been examined in accordance with GAAS. Plaintiffs are informed and believe and thereon allege that COHN prepared for inclusion in documents filed by COUSINS in connection with the December 1983 public offering restated financial statements for the periods ended June 30, 1979 and 1980. Plaintiffs are informed and believe and thereon allege that COHN and MAIN prepared for inclusion in the COUSINS Prospectus financial information covering the period July 1, 1983 through September 30, 1983. At all times pertinent hereto, defendant COHN committed the wrongful acts and omissions set forth below in the ordinary course and conduct of its business and aided and

abetted others in committing wrongful acts and omissions complained of herein in part to obtain the substantial fees it received from COUSINS.

13. Plaintiffs are informed and believe and thereon allege that Defendant ED BACANI ("BACANI"), an individual, is a resident of the State of California who, as a certified public accountant licensed under the laws of the State of California, acted at all times pertinent hereto as the partner in the COHN accounting firm, principally responsible for the conduct and handling of much of COUSINS accounting affairs. He substantially participated in the preparation of financial information contained in the COUSINS Registration Statement and COUSINS Prospectus, and regarding various accounting matters relating thereto. At all times pertinent hereto, defendant BACANI committed the wrongful acts and omissions set forth below in the ordinary course of the business of the COHN partnership or with the authority of his co-partners.

14. Plaintiffs are informed and believe and thereon allege that Defendant ROBERT TORKAR ("TORKAR"), an individual, is a resident of the State of California who, as a certified public accountant licensed under the laws of the State of California, acted at all times pertinent hereto as a senior associate employed by COHN, who participated substantially in the furnishing of services to COUSINS by that firm in connection with activities which are the subject of this Complaint. At all times pertinent hereto, defendant TORKAR committed the wrongful acts and omissions set forth below in the ordinary course of the business of the COHN partnership or as a COHN

employee acting within the scope of the business of the COHN partnership.

15. Defendants DOES 1 through 100, inclusive, are natural persons sued herein under fictitious names for the reason that Plaintiffs are unaware of their true names and capacities; at such time as said true names and capacities are ascertained, Plaintiffs will seek leave to amend this Complaint to substitute such true names for such fictitious names. Each of said Defendants is liable in some manner for the damages sued upon herein.

16. Plaintiffs are informed and believe, and thereon allege that MUSICK, CASTRO and SCHUCHARD and each Doe Defendant is the agent of and liable for the acts and omissions of the others.

17. Defendants ROES 1 through 100, inclusive, are natural persons sued herein under fictitious names for the reason that Plaintiffs are unaware of their true names and capacities; at such time as said true names and capacities are ascertained, Plaintiffs will seek leave to amend this Complaint to substitute such true names for such fictitious names. Each of said Defendants is liable in some manner for the damages sued upon herein.

18. Plaintiffs are informed and believe, and thereon allege that MAIN and each Roe Defendant 1 through 100, inclusive, is the agent of and liable for the acts and omissions of the others.

19. Defendants ROES 101 through 200, inclusive, are natural persons sued herein under fictitious names for the reason that Plaintiffs are unaware of their true names and capacities; at such time as said true names and

capacities are ascertained, Plaintiffs will seek leave to amend this Complaint to substitute such true names for such fictitious names. Each of said Defendants is liable in some manner for the damages sued upon herein.

20. Plaintiffs are informed and believe, and thereon allege that PEAT, MARWICK and each Roe Defendant, 101 through 200, inclusive, is the agent of and liable for the acts and omissions of the others.

21. Defendants ROES 201 through 300, inclusive, are natural persons sued herein under fictitious names for the reason that Plaintiffs are unaware of their true names and capacities; at such time as said true names and capacities are ascertained, Plaintiffs will seek leave to amend this Complaint to substitute such true names for such fictitious names. Each of said Defendants is liable in some manner for the damages sued upon herein.

22. Plaintiffs are informed and believe, and thereon allege that COHN and each Roe Defendant, 201 through 300, inclusive, is the agent of and liable for the acts and omissions of the others.

FACTUAL BACKGROUND

23. *In Re COUSINS Securities Litigation*, filed in the United States Southern District of California and given Master File No. 84-1821-R(I) (hereafter *"COUSINS Securities Litigation"*), was a federal class action brought on behalf of the purchasers of COUSINS common stock between December 7, 1983, and July 18, 1984, (the "Class Period"). The plaintiffs in that action named as defendants various officers and directors of COUSINS during

the Class Period, RB Industries, Inc. (hereafter "RB"), and the co-lead underwriters of COUSINS' December 7, 1983, initial public offering, Wheat, First Securities, Inc., and Montgomery Securities, all of whom were insured under the WAUSAU Policy and/or the FEDERAL Policy. The plaintiffs therein alleged that the named defendants violated §§ 11, 12(2) and 13(b)(2) of the Securities Act, § 10(b) of the Exchange Act, and §§ 1507, 2254, 25400, 25401, 25500 and 25501 of the California Corporations Code. In addition, the plaintiffs asserted claims under California common law for fraud and negligent misrepresentation. The plaintiffs' federal securities claims as well as the pendent state law claims were certified by the United States District Court for the Southern District of California.

24. The plaintiffs in the *COUSINS Securities Litigation* alleged that since December 7, 1983, when COUSINS made its initial public offering of common stock through its Registration Statement and Prospectus (hereafter collectively and individually the "COUSINS Prospectus" as required by the context), and throughout the Class Period, the named defendants engaged in a scheme which was designed to distort COUSINS' state of business affairs and its financial condition by disseminating a series of materially false and misleading statements, and by omitting to state material facts. The complaint alleged that the defendants were in possession of or recklessly disregarded adverse information regarding COUSINS, its business and future business prospects, which served to make the COUSINS' Prospectus and other public statements materially misleading. It further alleged that the investing public, including the named plaintiffs and

others, who purchased COUSINS common stock during the Class Period (hereafter the "Class") did so at prices which were artificially inflated due to defendants' misrepresentations and omissions, and was damaged thereby.

25. The Class brought no claims against the Defendants herein.

Circumstances of the Loss

26. During the course of the *COUSINS Securities Litigation*, Plaintiffs determined that in their opinion at least some of their insureds had violated laws as alleged by the plaintiffs in the *COUSINS Securities Litigation*, and that, for a variety of legitimate reasons, it was in the best interests of their insureds that they settle with the Class.

27. The defendants in the *COUSINS Securities Litigation* and Plaintiffs herein made the settlement hereinafter described in faith under a reasonable belief that it was necessary to protect their interests, and based on a reasonable estimate of their liability at the time of the settlement.

28. The total amount paid by the Plaintiffs herein in cash resolve the liability of their insureds to the Class was $13,000,000 out of a total settlement of $13,500,000. The first payment of the settlement was made by WAUSAU on May 23, 1988; less than one year from the date of this lawsuit for contribution and equitable indemnity.

29. The wrongful course of conduct of the Defendants described herein proximately caused the loss of the

Plaintiffs and Class resulting in the legal consequences stated in the claims for relief set forth below.

Activities of MUSICK, CASTRO, SCHUCHARD and DOES 1 through 100, Inclusive, and Their Wrongful Conduct

30. COUSINS was incorporated in March of 1983 by RB and the former shareholders of SAL pursuant to a pre-incorporation agreement. MUSICK and CASTRO represented RB in connection with its investment in and the organization of COUSINS. After the organization of COUSINS, and at times relevant to this lawsuit, the MUSICK firm and CASTRO were principally responsible for the conduct and handling of the legal affairs of both COUSINS and RB.

31. COUSINS and its officers and directors retained the legal services of the MUSICK firm and CASTRO to, among other matters, provide advice and counsel in all matters concerning the public offering of common stock of COUSINS; draft and file all documents required by federal and state law in connection therewith, including without limitation the COUSINS Prospectus; make certain that COUSINS and its officers and directors complied with all federal and state laws applicable to the offering and satisfied their responsibilities in connection therewith; review, analyze and provide legal advice regarding certain statements and documents prior to public dissemination; and to provide legal representation in connection with related party transactions between COUSINS and RB. MUSICK assisted COUSINS and the named individual defendants in the *COUSINS Securities Litigation* in planning the December 1983 public stock sale, conducted

or participated in investigations into, among other matters, the business, operations, future business prospects, financial, accounting and management control of COUSINS, conducted due diligence investigations on behalf of the officers and directors, and met with various of the defendants named in the *COUSINS Securities Litigation* in connection with the contents of the COUSINS Prospectus, and all drafts thereof, and the financial information contained therein.

32. In connection with the foregoing legal services:

(a) the MUSICK firm, CASTRO and SCHUCHARD acted as counsel for COUSINS, a Delaware corporation, in connection with the sale by COUSINS of over 2,000,000 shares, at $15 per share, of COUSINS common stock in or about December, 1983. They prepared drafts of the company's Registration Statement on Form S-I, including the one originally filed on October 11, 1983, with the Securities and Exchange Commission under the Securities Act, as amended, as well as Amendment No. 1 thereto, filed on October 21, 1983, Amendment No. 2 thereto filed on November 30, 1983, Amendment No. 3 thereto filed on December 6, 1983, and Amendment No. 4 thereto filed on December 7, 1983, including as a part thereof a form of Prospectus covering the common shares, and, in connection with all of the foregoing, conducted "all hands" meetings and communicated with the Securities and Exchange Commission regulatory agencies of states in which COUSINS' stock was sold. Plaintiffs are informed and believe and thereon allege that, in connection with the foregoing these defendants conducted or participated in an investigation known as a "due diligence" investigation as part of the public offering.

(b) The MUSICK firm, CASTRO and SCHUCHARD reviewed, rendered legal advice and drafted textual material concerning non-expertised financial information published in the COUSINS Prospectus;

(c) The MUSICK firm and CASTRO reviewed and rendered legal advice concerning information contained in COUSINS' February 1984 "Report to Shareholders"; and

(d) The MUSICK firm and CASTRO represented both COUSINS and RB in connection with COUSINS' acquisition of RB's Mission Valley leasehold interest for $1,200,000.

33. The MUSICK firm, CASTRO and SCHUCHARD were reckless, grossly negligent and negligent, and by virtue thereof, misrepresented, actively concealed and failed to disclose or caused the failure to disclose, or caused to be misrepresented or concealed the following matters, which, as securities counsel, they knew or should have known would be relied upon by the market in general and by purchasers of the common stock of COUSINS, including the Class:

(a) Item 503(c) of regulation S-I, 17 C.F.R. Section 229.503(c) requires a registrant such as COUSINS to set forth on the page immediately following the cover page of the Prospectus or following the summary section of the Prospectus, under an appropriate caption, a discussion of the principal factors that make an offering speculative or one of high risk. Although the COUSINS Prospectus contained a section euphemistically entitled "Certain Considerations" on the page following the cover page, it failed to reveal the material risks associated with

an investment in COUSINS securities, including risks relating to (1) COUSINS' expansion plans; (2) sales not meeting expectations; (3) costs and expenses exceeding projected levels; (4) lack of internal accounting and management controls, procedures and systems; (5) logistic and supply problems in view of COUSINS expansion plans, which included opening 14 stores at once in the San Francisco area; (6) the difficulties and additional cost of delivering furniture in the San Francisco area as contrasted with other areas in which the company had previously operated; (7) risks of over-spending and the company's inability to control costs; and (8) the inventory control computer system, which the company believed was "an essential element of the company's profitability", being able to effectively handle the responsibilities required of it on the scale necessitated by the company's expansion program. MUSICK, CASTRO and SCHUCHARD as securities lawyers were reckless in not identifying these real and material risks and not drafting the COUSINS Prospectus to disclose them. In fact, all of these material risks subsequently materialized causing diminution in the price of COUSINS stock and resulting in damage to the Class.

(b) Item 501(c)(4) of regulation S-K, 17 C.F.R. Sections 229.501(c)(4) requires a registrant such as COUSINS to set forth on the outside front cover of the page of the prospectus, in bold face roman type at least as high as 10-point modern type and at least two points leaded, a cross reference to more detailed discussion elsewhere in the prospectus, of material risks in connection with the purchase of COUSINS stock. MUSICK, CASTRO

and SCHUCHARD as securities lawyers were reckless in not drafting the COUSINS Prospectus as required by law.

(c) In connection with two airplanes rented by COUSINS from related parties, MUSICK, CASTRO and SCHUCHARD wrote in the COUSINS Prospectus that COUSINS was unable to determine the comparative fair market rentals for the use of such planes. They then wrote that in the future COUSINS intended to have the terms and conditions of all transactions between itself and an officer or director approved by a majority of disinterested directors, and that such transactions would be on terms COUSINS believed to be at least as favorable as those obtainable from an unaffiliated third party. MUSICK, CASTRO and SCHUCHARD investigated and ascertained prior to the effective date of the COUSINS Prospectus what comparative fair market rentals for such planes would be and knew that the terms between COUSINS and the related parties were not fair and not at least as favorable as those obtainable from an unaffiliated third party. These Defendants knew the foregoing, yet drafted material misstatements concerning these related-party transactions which were included in the COUSINS Prospectus.

(d) In mid-February, 1984, in its "Report to shareholders" for the 4th Quarter ended December 31, 1983, COUSINS falsely reported that "the San Diego market is now profitable.". In reality, COUSINS' San Diego division was losing money. With full knowledge of the intended dissemination to COUSINS' shareholders, the MUSICK firm and CASTRO were asked to pass upon and render legal advice in connection with statements contained in the aforementioned "Report to Shareholders"

and were reckless, grossly negligent and negligent in carrying out their responsibilities.

(e) Prior to the effective date of the COUSINS prospectus, RB was negotiating with a company called United Furniture Company to purchase certain of its assets, including five leases to United Furniture retail stores, one of which was in Mission Valley. While no agreement had been reached as of the effective date of the COUSINS Prospectus between RB and COUSINS for RB to assign the Mission Valley lease to COUSINS, the Class in the *COUSINS Securities Litigation* asserted that the securities laws required disclosures relating to this contemplated transaction in COUSINS Prospectus. Within ninety (90) days of the effective date of the COUSINS Prospectus, RB and COUSINS did enter into a written agreement pursuant to which RB assigned the Mission Valley lease to COUSINS and COUSINS agreed to pay RB $1.2 million in key money. Defendants MUSICK and CASTRO represented RB in all matters relating to the acquisition of the Mission Valley leasehold and the other assets from United Furniture Company, were aware of and fully familiar with discussions between COUSINS and RB concerning the possible assignment by RB to COUSINS of the Mission Valley lease, and represented both RB and COUSINS in the transaction by which RB assigned the Mission Valley lease to COUSINS for $1.2 million. There is an obligation pursuant to Section 4(3) of the Securities Act, 15 U.S.C. § 77d, to maintain an accurate prospectus during the ninety (90) day period following an offering (the "evergreen period") – in the case of COUSINS, until March 7, 1984. The transaction for the assignment by RB to COUSINS of the Mission Valley lease was not only

material but constituted a related party transaction which required disclosure. The Class and the named defendants in the *COUSINS Securities Litigation* relied on MUSICK and CASTRO to make certain that COUSINS and its officers and directors complied with all laws, including without limitation those that required that the COUSINS Prospectus not contain material misstatements or omissions and that the COUSINS Prospectus remain accurate throughout the evergreen period. Defendants MUSICK and CASTRO were reckless, grossly negligent and negligent in carrying out their responsibilities, because they failed to comply with Section 4(3) of the Securities Act by failing to disclose this transaction during the "evergreen period".

Activities of MAIN, COHN, BACANI, and TORKAR, and ROES 1 through 100, and ROES 201 through 300, Inclusive, (the "Accountant Defendants") and Their Wrongful Conduct

34. Defendant BACANI served as the COHN audit engagement partner for the fiscal years 1981 and 1982 audits. Defendant TORKAR, as an employee of COHN, performed audit services for SAL and its subsidiaries and COUSINS for the fiscal years 1980, 1981 and 1982. In addition, Defendant TORKAR and other COHN personnel rendered accounting services to COUSINS and Defendant MAIN in connection with MAIN's fiscal year 1983 audit of COUSINS, despite the fact that from approximately March of 1983, a partner in the COHN firm, Benjamin Alpert, also served on the board of directors of COUSINS.

35. Defendants COHN, BACANI and TORKAR prepared and issued certified reports and financial statements for COUSINS and rendered accounting services in connection with the restatement of financial statements, all of which were included in the COUSINS Prospectus, knowing that said information would be communicated to purchasers of COUSINS common stock, such as the Class, through the COUSINS Prospectus, and that persons such as the members of the Class would rely thereon.

36. MAIN prepared and issued the certified report and financial statements at and as of June 30, 1983, which were included in the COUSINS Prospectus, knowing that said information would be communicated to purchasers of COUSINS common stock, such as the members of the Class, through the COUSINS Prospectus, and that they would rely thereon. In addition, Plaintiffs are informed and believe and thereon allege that MAIN participated in the preparation of post audit financial information included in the COUSINS Prospectus. MAIN also had legal responsibility for reviewing financial information and events subsequent to the date of the June 30, 1983, financials (referred to as an S-1 review) to ascertain whether information should be disclosed in the COUSINS Prospectus in order to prevent the financial information presented from being misleading. COHN and MAIN assisted MUSICK in the preparation and filing of the COUSINS Prospectus and, as a result their participation and investigation into the business operations and prospects and financial, accounting and management controls and systems of COUSINS, knew or recklessly disregarded

the false and misleading nature of the financial information contained in COUSINS Prospectus.

37. Plaintiffs are informed and believe and thereon allege that in connection with COUSINS Prospectus COHN and MAIN reviewed the interim financial statements included therein. COHN issued unqualified opinions that the financial statements of COUSINS for the years ended June 30, 1981 and 1982, fairly presented the condition of COUSINS under GAAP. MAIN issued an unqualified opinion on the financial statements for COUSINS for the year ended June 30, 1983, which stated that they fairly presented the financial condition of COUSINS. Said opinions were false and misleading in that COHN and MAIN knew, or but for their recklessness would have known, that the audited financial statements of COUSINS were false and misleading as specified below. Moreover, COHN and MAIN knew, or but for their recklessness would have known, of substantial operating problems of SAL and COUSINS, including the lack of adequate internal accounting and management controls. Notwithstanding the foregoing, COHN and MAIN improperly relied on management representations, including but not limited to company-prepared financial statements and SAL's and COUSINS' unreliable or nonexistent internal controls. Plaintiffs are informed and believe and thereon allege that COHN and MAIN performed reviews on COUSINS' unaudited financial statements included in the COUSINS Prospectus and either knowingly, recklessly or negligently failed to disclose that the unaudited financial statements for the years ended June 30, 1979 and 1980, and for the first quarter of

fiscal year 1984, ended September 30, 1983, were materially false and misleading.

38. COHN and MAIN, in reporting on COUSINS' financial statements, stated that their examinations were made "in accordance with generally accepted auditing standards . . . ". This statement is false and misleading in that the following auditing standards approved and adopted by the membership of the American Institute Certified Public Accountants ("AICPA"), among others, were violated:

(a) AICPA General Standard No. 3 was violated, which requires that due professional care be exercised in the performance of the examination and in the preparation of the report.

(b) AICPA Standard of Field Work No. 2 was violated, which requires that there be a proper study and evaluation of the existing internal controls as a basis for reliance thereon and for determining the extent of testing to be performed during the audit.

(c) AICPA Standard of Field Work No. 3 was violated, which requires that sufficient competent evidential matter be obtained through inspection, observation, inquiries, and confirmation to afford a reasonable basis for an opinion regarding financial statements under examination.

(d) AICPA Standard of Reporting No. 1 was violated, in that COHN and MAIN falsely represented that the financial statements were presented in accordance with GAAP when in fact such statements were not so presented, as described below.

(e) AICPA Standard of Reporting No. 3 was violated, which requires that information disclosures in the financial statements be reasonably adequate unless otherwise stated in the report.

39. COHN and MAIN also knew or were reckless, grossly negligent, and negligent in disregarding facts which indicated that the financial statements in the COUSINS Prospectus were presented in a manner which violated the following generally accepted accounting principles, among others:

(a) The principle of adequacy and fairness of disclosure was violated, since information was not presented in a way that facilitated understanding and avoided erroneous implications. (Statement No. 4 of Accounting Principles Board ("Statement No. 4"), paragraph 106.)

(b) The principle that a conservative approach is appropriate, for, among other matters, minimizing the amount of net assets and income reported, was violated, (Statement No. 4, paragraph 35).

(c) The principle that the economic substance of transactions should be emphasized rather than formal considerations violated. (Statement No. 4, paragraph 35.)

(d) The principle that the financial information presented should be complete was violated. (Statement No. 4, paragraph 94.)

40. In addition, the Accountant Defendants were reckless, grossly negligent and negligent, and by virtue thereof, misrepresented, actively concealed and failed to disclose or caused the failure to disclose, or caused to be

misrepresented or concealed the following matters, which the Accountant Defendants knew or should have known would be relied upon by the market in general and by purchasers of the common stock of COUSINS, including Class:

Change in Revenue Recognition Policy.

(a) Shortly before the December 1983 initial public offering, COUSINS changed its revenue recognition accounting policy restated its prior periods' financial statements to reflect the change. The change was from a generally accepted policy used in furniture industry to one rarely utilized. The restated financial statements prepared for inclusion by COHN in the COUSINS Prospectus were presented without required disclosures of the fact change, the nature of the change, the justification for the change, the financial effect of the change for the period when the change was effectuated, the effect on prior periods, or the impact on subsequent periods. These omissions violated Regulation S-X as embodied in 17 C.F.R. § 210.1-01 *et seq.* and GAAP. The actual effect of the change in the revenue recognition policy was to inflate revenues and earnings. COHN and MAIN falsely represented that the financial statements in COUSINS Prospectus were prepared in accordance with GAAP. They were in fact not so prepared.

(b) The failure to disclose the material change in accounting policy was exacerbated because Accounting Principles Board Statement No. 20 allowing a one-time exception for the retroactive restatement of a company's financial statement was not available to COUSINS.

COUSINS had previously issued and delivered financial statements to RB in connection with RB's investment of $3,000,000 in additional capital in April of 1983. Accounting Principles Board Statement No. 20 forbade utilization of the one-time exception after the RB investment.

(c) The change in the method of revenue recognition was also improper because COUSINS did not have the accounting records necessary to restate prior financial statements. The Accountant Defendants were responsible for a response to a Securities and Exchange Commission comment letter indicating that COUSINS' revenue recognition policies were based on historical information. The Accountant Defendants were aware that no such historical information existed at the time the restatements were being made.

(d) The change in the method of revenue recognition had a substantial impact on COUSINS' reported earnings for the three-month "stub" period covering July 1, 1983 through September 30, 1983 – the last reporting period included in the COUSINS Prospectus prior to the December 1983 public offering. The effect of the failure by the Accountant Defendants to describe the change in the accounting for revenue recognition, its nature, the justification for it, and its effect in artificially inflating COUSINS' revenues and net income was a failure to disclose material facts necessary to make the statements made, including without limitation, the audited financials and the notes thereto, in light of the circumstances in which they were made, not misleading. This was especially important because the initial offering of COUSINS common stock was sold to the public at a very high

multiple of earnings based on the inflated earnings figures.

Computer Programming Expenses.

(e) In connection with the restatement of financial statements included within the COUSINS Prospectus, the Accountant Defendants caused the elimination of a write-off of computer programming expenses originally included in SAL's 1979 financials. The elimination of this item, along with other accounting manipulations, caused COUSINS to report in the COUSINS Prospectus $46,000 profit for 1979, as opposed to a $86,000 loss as originally shown by COHN's 1979 audited financial statements for SAL. The effect of this change in accounting treatment, as well as others, was to give COUSINS and its predecessor an appearance of profitability over a five-year period.

(CLAIMS FOR RELIEF)

(First Claim for Relief)

(Contribution Under Federal Law Based on Violations of § 10(b) of the Exchange Act, 15 U.S.C. § 78(j)(b), and the Securities 10b-5, 17 C.F.R. § 240. 10b-5)

41. Plaintiffs reallege and incorporate herein by this reference as though fully set forth the allegation in paragraphs 1 through 33, inclusive, above.

42. This claim for relief is directed by the Plaintiffs against Defendants MUSICK, CASTRO, SCHUCHARD and DOES 1 through 100, inclusive, (the "Section 10(b) Attorney Defendants") and seeks apportionment of the loss under federal principles of contribution occasioned

by the wrongful conduct of the Section 10(b) Attorney Defendants as the ends of justice require.

43. The COUSINS common stock purchased by members of the Class, are securities within the meaning of the Exchange Act, 15 U.S.C., § 78(c)(a)(10).

44. In failing to disclose the facts and in making the misrepresentations set forth in paragraphs 30 through 33, inclusive, and 40 above, the Section 10(b) Attorney Defendants violated Section 10(b) of the Exchange Act, 15 U.S.C., § 78(j)(b) and Rule 10b-5 C.F.R. § 240.10b-5, promulgated thereunder by the Securities and Exchange Commission.

45. The Section 10(b) Attorney Defendants made the misrepresentations and omissions with a reckless disregard for their falsity and materiality and with a reckless disregard that said conduct constituted violations of the federal securities laws.

46. The Section 10(b) Attorney Defendants intended by said misrepresentations and omissions to induce persons such as members of the Class to purchase COUSINS common stock. The Class relied upon these Defendants' misrepresentations and omissions, and would not have purchased the securities had they known the true and material facts, or would not have paid the inflated prices they paid for such securities at the time they purchased them.

47. At all times relevant hereto, each of the Section 10(b) Attorney Defendants knew or were reckless in not knowing that each of the Section 10(b) Accounting Defendants was acting in violation of Section 10(b). Each of

these Section 10(b) Attorney Defendants nevertheless knowingly rendered substantial assistance to said violations of Section 10(b) as set forth in paragraphs 34 through 40, inclusive, above. Accordingly, each of the Section 10(b) Attorney Defendants is liable for aiding and abetting violations of Section 10(b) by each of the other Section 10(b) Accountant Defendants.

48. As a direct and proximate result of these Defendants' violations of Section 10(b) and Rule 10b-5, the Class was damaged in an amount not less than $13,500,000 in connection with their purchase of COUSINS common stock.

49. By reason of the settlement described in paragraphs 26 through 28, inclusive, above, the Plaintiffs herein, on behalf of their insureds, compensated the Class for a portion of their loss by payment of $13,000,000 in cash.

50. As between the Plaintiffs as the subrogee of the defendants named in the *COUSINS Securities Litigation* (on whose behalf Plaintiffs paid $13,000,000), and the Section 10(b) Attorney Defendants, responsibility for the damages incurred by the Class rests entirely or partially on these Section 10(b) Attorney Defendants by reason of their violations of Section 10(b) and Rule 10b-5 as alleged herein. As a result, the Section 10(b) Attorney Defendants, and each of them, are obligated to pay by way of contribution to the Plaintiffs for the sums they paid to the Class.

51. By reason of the foregoing, Plaintiffs are entitled to contribution, in whole or in part, from the Section 10(b)

Attorney Defendants in an amount to be determined at trial according to proof.

(Second Claim for Relief)

(Equitable Indemnity Under State Law Based on Violations of Section 10(b) of the Exchange Act, 15 U.S.C., Section 78(j)(b) and Securities and Exchange Commission Rule 10b-5, 17 C.F.R., Section 240. 10b-5)

52. Plaintiffs reallege and incorporate herein by this reference as though fully set forth the allegations in paragraphs 1 through 33, inclusive, and 43 through 50, inclusive, above.

53. This claim for relief is directed by the Plaintiffs against Defendants MUSICK, CASTRO, SCHUCHARD and DOES 1 through 100, inclusive, (the "Section 10(b) Attorney Defendants"), and seeks apportionment of the loss under state law principles of implied equitable indemnity occasioned by the wrongful conduct of the Section 10(b) Attorney Defendants as the ends of Justice require.

54. By reason of the foregoing, Plaintiffs are entitled to equitable indemnity, in whole or in part, from the Section 10(b) Attorney Defendants in an amount to be determined at trial according to proof.

(Third Claim for Relief)

(Contribution under Federal Law Based on Violation of Section 10(b) of the Exchange Act, 15 U.S.C. Section 78(j)(b), and the Securities and Exchange Commission Rule 10b-5, 17 C.F.R., Section 240. 10b-5)

55. Plaintiffs reallege and incorporate herein by this reference as though fully set forth the allegations in paragraphs 1 through 29, inclusive, 34 through 40, inclusive, and 43 above.

56. This claim for relief is directed by the Plaintiffs against Defendants MAIN, PEAT, MARWICK, COHN, BACANI, TORKAR and ROES 1 through 300, inclusive (the "Section 10(b) Accountant Defendants") and seeks apportionment of the loss based on federal principles of contribution occasioned by the wrongful conduct of the Accountant Defendants as the ends of Justice require.

57. In failing to disclose the facts and in making the misrepresentations set forth in paragraphs 34 through 40, inclusive, above, the Accountant Defendants violated Section 10(b) of the Exchange Act, 15 U.S.C., § 78(j)(b) and Rule 10b-5 C.F.R. § 240.10b-5, promulgated thereunder by the Securities and Exchange Commission.

58. The Accountant Defendants made the misrepresentations and omissions with a reckless disregard for their falsity and materiality and with a reckless disregard that said conduct constituted violations of the federal securities laws.

59. The Accountant Defendants intended by said misrepresentations and omissions to induce persons such as members of the Class to purchase COUSINS common

stock. The Class relied upon these Defendants' misrepresentations and omissions, and would not have purchased the securities had they known the true and material facts, or would not have paid the inflated prices they paid for such securities at the time they purchased them.

60. At all times relevant hereto, each of the Accountant Defendants knew or were reckless in not knowing that each of the Section 10(b) Attorney Defendants was acting in violation of Section 10(b). Each of these Accountant Defendants nevertheless knowingly rendered substantial assistance to said violations of Section 10(b) as set forth in paragraphs 30 through 33, inclusive, above. Accordingly, each of the Section 10(b) Accountant Defendants is liable for aiding and abetting violations of Section 10(b) by each of the other Section 10(b) Attorney Defendants.

61. As a direct and proximate result of these Defendants' violations of Section 10(b) and Rule 10b-5, the Class was damaged in an amount not less than $13,500,000 in connection with their purchase of COUSINS common stock.

62. By reason of the settlement described in paragraphs 26 through 28, inclusive, above, the Plaintiffs herein, on behalf of their insureds, compensated the Class for a portion of their loss by payment of $13,000,000 in cash.

63. As between the Plaintiffs as the subrogee of the defendants named in the *COUSINS Securities Litigation* (on whose behalf Plaintiffs paid $13,000,000), and the Section 10(b) Accountant Defendants, responsibility for

the damages incurred by the Class rests entirely or partially on these Section 10(b) Accountant Defendants by reason of their violations of Section 10(b) and Rule 10b-5 as alleged herein. As a result, the Section 10(b) Accountant Defendants, and each of them, are obligated to pay by way of contribution to the Plaintiffs for the sums they paid to the Class.

64. By reason of the foregoing, Plaintiffs are entitled to contribution, in whole or in part, from the Section 10(b) Accountant Defendants in an amount to be determined at trial according to proof.

(Fourth Claim for Relief)

(Equitable Indemnity Under State Law Based on Violations of Section 10b of the Exchange Act, 15 U.S.C. Section 78(j)(b) and Securities and Exchange Commission Rule 10b-5, 17 C.F.R., Section 240.10b-5)

65. Plaintiffs reallege and incorporate by this reference as though fully set forth the allegations in paragraphs 1 through 29, inclusive, 34 through 40, inclusive, 57 through 63, inclusive, and 43 above.

66. This claim for relief is directed by Plaintiffs against Defendants MAIN, PEAT, MARWICK, COHN, BACANI, TORKAR and ROES 1 through 300, inclusive (the "Section 10(b) Accountant Defendants"), seeks apportionment of the loss under state law principles of implied equitable indemnity occasioned by the wrongful conduct of Accountant Defendants as the ends of justice require.

67. By reason of the foregoing, Plaintiffs are entitled to equitable indemnity, in whole or in part, from the Section 10(b) Accountant Defendants in an amount to be determined at trial according to proof.

(Fifth Claim for Relief)

(Contribution Under Federal Law Based on Violations of Section 11 of the Securities Act, 15 U.S.C. Section 77k)

68. Plaintiffs reallege and incorporate by this reference as though fully set forth the allegations in paragraphs 1 through 29, inclusive, 34 through 40, inclusive, and 43 above.

69. This claim for relief is directed by the Plaintiffs against Defendants MAIN, PEAT, MARWICK, COHN, BACANI, TORKAR and ROES 1 through 300, inclusive (the "Section 11 Defendants") and seeks apportionment of loss under federal principles of contribution occasioned by the wrongful conduct of the Section 11 Defendants as the ends of justice require.

70. In failing to disclose the facts and in making the misrepresentations set forth in paragraphs 34 through 40, inclusive, above, the Accountant Defendants violated Section 11 of the Securities Act, 15 U.S.C. § 77k.

71. Each of the Accountant Defendants knowingly rendered substantial assistance in the violations of Section 11, set forth in paragraphs 34 through 40, inclusive, above. Each of the Accountant Defendants are liable for aiding and abetting violations of Section 11 by each of the other Accountant Defendants. As a direct and proximate result of these Defendants' violations of Section 11, the

Class was damaged in an amount not less than $13,500,000 in connection with their purchases of COUSINS common stock.

72. As between the Plaintiffs as the subrogees of the defendants named in the *COUSINS Securities Litigation* (on whose behalf Plaintiffs paid $13,000,000), and the Section 11 Defendants, responsibility for damages incurred by the Class rests entirely or partially on these Section 11 Defendants by reason of their violations of Section 11 as alleged herein. As a result, the Section 11 Defendants, and each of them, are obligated to pay by way of contribution to the Plaintiffs for the sums they paid to the Class.

73. By reason of the foregoing, Plaintiffs are entitled to contribution, in whole or in part, from the Section 11 Defendants in an amount to be determined at trial according to proof.

(Sixth Claim for Relief)

(Equitable Indemnity Under State Law Based on Violations of Section 11 of the Securities Act, 15 U.S.C., Section 77k)

74. Plaintiffs reallege and incorporate by this reference as though fully set forth the allegations in paragraphs 1 through 29, inclusive, 34 through 40, inclusive, 43 and 70 through 72, inclusive above.

75. This claim for relief is directed by the Plaintiffs against Defendants MAIN, PEAT, MARWICK, COHN, BACANI, TORKAR, and ROES 1 through 300, inclusive (the "Section 11 Defendants"), and seeks apportionment

of the loss under state law principles of implied equitable indemnity occasioned by the wrongful conduct of the Section 11 Defendants as the ends of justice require.

76. By reason of the foregoing, Plaintiffs are entitled to equitable indemnity, in whole or in part, from the Section 11 Defendants in an amount to be determined at trial according to proof.

(Seventh Claim for Relief)

(Equitable Indemnity Based on Violations of California Corporations Code § 25401, 25501, 25504.1 and 25504.2)

77. Plaintiffs reallege and incorporate by this reference as though fully set forth the allegations in paragraphs 1 through 29, inclusive, 34 through 40, inclusive, and 43 above.

78. This claim for relief is directed by Plaintiffs against Defendants MAIN, PEAT, MARWICK, COHN, BACANI, TORKAR and ROES 1 through 300, inclusive, (collectively referred to in this claim for relief as the "Corporations Code Defendants") and seeks full or partial indemnity from them under state law principles of implied equitable indemnity occasioned by the wrongful conduct of the Corporations Code Defendants as the ends of justice require.

79. By reason of the foregoing allegations, the Corporations Code Defendants have violated sections 25401 and 25501 of the California Corporations Code and are liable pursuant to Sections 25504.1 and 25504.2 of the California Corporations Code.

80. The Corporations Code Defendants materially assisted violations of Section 25401 by COUSINS with the intent to deceive or defraud the purchasers of COUSINS securities, including the Class, in violation of Corporations Code Section 25504.1.

81. The Corporations Code Defendants were named in the COUSINS Prospectus with respect to financial information which contained an untrue statement of material facts and which omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading, in violation of Corporations Code Section 25504.2.

82. As a direct and proximate result of the Accountant Defendants' violations of Section 25401, 25504.1 and 25504.2, the Class was damaged in an amount not less than $13,500,000 in connection with their purchases of COUSINS common stock.

83. By reason of the settlement described in paragraphs 26 through 28, inclusive, above, the Plaintiffs compensated the Class for a portion of their losses by payment of $13,000,000 in cash.

84. As between the Plaintiffs, as subrogees of the defendants named in the *COUSINS Securities Litigation* (on whose behalf Plaintiffs paid $13,000,000), and the Corporations Code Defendants, responsibility for the damages incurred by the Class rests entirely or partially on the Corporations Code Defendants by reason of their violations of Corporations Code Sections 25401, 25504.1 and 25504.2 as herein alleged. As a result, the Corporations Code Defendants, and each of them, are obligated to

fully or partially indemnify Plaintiffs for the sums they paid to the Class.

85. By reason of the foregoing, Plaintiffs are entitled to equitable indemnity, in whole or in part, from the Corporations Code Defendants in amounts to be determined at trial according to proof.

(Eighth Claim for Relief)

(Equitable Indemnity Based on Negligence)

86. Plaintiffs reallege and incorporate by this reference as though fully set forth the allegations in paragraphs 1 through 33, inclusive, and 47 above.

87. This claim for relief is directed by Plaintiffs against Defendants MUSICK, CASTRO, SCHUCHARD and DOES 1 through 100, inclusive, (collectively referred to in this claim for relief as the "Attorney Defendants"). This claim is based upon negligent acts or omissions, and breaches of the duties of care, diligence and skill these Attorney Defendants owed to purchasers of COUSINS securities, including the Class. Plaintiffs seek full or partial indemnity from the Attorney Defendants under state law principles of implied equitable indemnity based on their negligence as the ends of justice require.

88. Having been retained and having acted as legal counsel for COUSINS and on behalf of its directors and officers for the purpose of furnishing a myriad of legal services, among them specific services designed to induce or reasonably expected to influence prospective purchasers of COUSINS common stock, including the Class, the Attorney Defendants undertook the duty to such

persons to perform those services in accordance with the ordinary care, diligence, skill and integrity exercised by members of the legal profession. Among the obligations undertaken by the Attorney Defendants was the duty to prepare the COUSINS Prospectus and any required amendments thereto in full compliance with federal and state law and to prepare and provide advice and counsel with respect to written communication that they knew and/or reasonably should have foreseen, would be relied upon by purchasers of COUSINS securities, including the Class, in a manner that fairly and adequately disclosed matters pertaining to COUSINS, its business operations and prospects, financial, accounting and management control systems, its financial history, risks associated with an investment in COUSINS securities, related party transaction and its finances and financial difficulties.

89. In undertaking its obligations as legal counsel to COUSINS and on behalf of its officers and directors in all matters relating to the offering of COUSINS securities, the Attorney Defendants knew and/or reasonably should have foreseen that purchasers of COUSINS securities, including members of the Class, in determining whether to purchase COUSINS securities and at what prices, would rely upon the exercise by the Attorney Defendants of ordinary care, diligence, skill and integrity in the performance of their duties relating to the offering of COUSINS securities and information disseminated about COUSINS, its finances and business operations.

90. The Attorney Defendants owed to the purchasers of COUSINS securities, including to members of the Class, the duty of care, diligence and skill set forth above. By reason of the acts and omissions set forth

herein, including without limitations those matters alleged in paragraphs 30 through 33, inclusive, and 47 above, the Attorney Defendants breached their duties of care, diligence and skill to the purchasers of COUSINS securities, including the Class, and Defendant MUSICK breached its duty of supervision and control.

91. As a direct and proximate result of the Attorney Defendants' acts and/or omissions in violation of their duties of ordinary care, diligence, skill and supervision and control, the Class suffered damages in an amount not less than $13,500,000.

92. As between the Plaintiffs as the subrogee of the defendants named in the *COUSINS Securities Litigation* (on whose behalf Plaintiffs paid $13,000,000), and the Attorney Defendants, responsibility for the damages incurred by the Class rests entirely or partially on these Attorney Defendants by reason of their negligence as alleged herein. As a result, the Attorney Defendants, and each of them, are obligated to fully or partially indemnify the Plaintiffs for the sums they paid to the Class.

93. By reason of the foregoing, Plaintiffs are entitled to equitable indemnity, in whole or in part, from the Attorney Defendants in an amount to be determined at trial according to proof.

(Ninth Claim for Relief)

(Equitable Indemnity Based on Negligence)

94. Plaintiffs reallege and incorporate by this reference as though fully set forth the allegations in paragraphs 1 through 29, inclusive, 34 through 40, inclusive, and 60 above.

95. This claim for relief is directed by Plaintiffs against Defendants MAIN, PEAT, MARWICK, COHN, BACANI, TORKAR and ROES 1 through 300, inclusive, (collectively referred to in this claim for relief as the "Negligent Accountant Defendants"). This claim is based upon negligent acts or omissions, and breaches of the duties of care, diligence and skill the Accountant Defendants owed to purchasers of COUSINS securities, including the Class. Plaintiffs seek full or partial indemnity from the Negligent Accountant Defendants under state law principles of implied equitable indemnity based on their negligence as the ends of justice require.

96. Having been retained and having acted as certified public accountants for COUSINS for the purpose of furnishing a myriad of services, among them specific services designed to induce or reasonably expected to influence prospective purchasers of COUSINS common stock, including the Class, the Accountant Defendants undertook the duty to such persons to perform those services in accordance with the ordinary care, diligence, skill and integrity exercised by members of the accounting profession. Among the obligations undertaken by the Accountant Defendants was the duty to prepare financial information for inclusion in the COUSINS Prospectus in full compliance with federal and state law, and to prepare

and provide advice and counsel with respect to financial information that they knew and/or reasonably should have foreseen, would be relied upon by purchasers of COUSINS securities, including the Class, in a manner that fairly and adequately disclosed matters pertaining to COUSINS, its business operations and prospects, financial, accounting and management control systems, its financial history, and its finances and financial difficulties. Additionally, COHN had a duty to perform accounting services with appropriate professional independence and integrity unaffected by conflict of interest. It breached that duty by rendering auditing services in connection with certified financial statements included in the COUSINS Prospectus, while one of its partners served on the board of directors of its client, COUSINS.

97. In undertaking its obligations as certified public accountants to COUSINS, the Accountant Defendants knew and/or reasonably should have foreseen that purchasers of COUSINS securities, including members of the Class, in determining whether to purchase COUSINS securities, would rely upon the exercise by the Accountant Defendants of ordinary care, diligence, skill and integrity in the performance of their duties relating, among other matters, to the financial information prepared for inclusion by them in the COUSINS Prospectus.

98. The Accountant Defendants owed to the purchasers of COUSINS securities, including to members of the Class, the duty of care, diligence and skill set forth above. By reason of the acts and omissions set forth herein, including without limitations those matters alleged in paragraphs 34 through 40, inclusive, and 60 above, the Accountant Defendants breached their duties

of care, diligence and skill to the purchasers of COUSINS securities, including the Class, and Defendants MAIN and COHN breached their duty of supervision and control.

99. As a direct and proximate result of the Accountant Defendants' acts and/or omissions in violation of their duties of ordinary care, diligence, skill and supervision and control, the Class suffered damages in an amount not less than $13,500,000.

100. As between the Plaintiffs as the subrogee of the defendants named in the *COUSINS Securities Litigation* (on whose behalf Plaintiffs paid $13,000,000), and the Negligent Accountant Defendants, responsibility for the damages incurred by the Class rests entirely or partially on the Negligent Accountant Defendants by reason of their negligence as alleged herein. As a result, the Negligent Accountant Defendants, and each of them, are obligated to fully or partially indemnify the Plaintiffs for the sums they paid to the Class.

101. By reason of the foregoing, Plaintiffs are entitled to indemnity, in whole or in part, from the Attorney Defendants in an amount to be determined at trial according to proof.

PRAYER

WHEREFORE, Plaintiffs pray for judgment as follows:

1. *On the First, Third and Fifth Claims for Relief:*

(a) For contribution and damages according to proof;

2. *On the Second, Fourth, Six, Seventh, Eighth and Ninth Claims for Relief:*

(a) For complete or partial indemnity and damages according to proof; and

3. *On all Claims for Relief:*

(a) For reasonable attorneys' fees incurred herein;

(b) For costs of suit incurred herein; and

(c) For such other and further relief as the Court may deem proper.

Dated: July 17, 1989

Respectfully submitted,

NAGLER & SCHNEIDER

BY: *Lawrence H. Nagler (H.R.)*
LAWRENCE H. NAGLER, ESQ.
LARRY GOLDBERG, ESQ.
9460 Wilshire Blvd., Suite 410
Beverly Hills, California 90212

Attorneys for Plaintiffs
Employers Insurance of Wausau
and Federal Insurance Company

JURY DEMAND

Plaintiffs demand a trial by jury.

DATED: July 17, 1989

Respectfully submitted,

NAGLER & SCHNEIDER

BY: *Lawrence H. Nagler (H.R.)*
LAWRENCE H. NAGLER, ESQ.
LARRY GOLDBERG, ESQ.
9460 Wilshire Blvd., Suite 410
Beverly Hills, California 90212

Attorneys for Plaintiffs
Employers Insurance of Wausau
and Federal Insurance Company